U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
JOI SHAHAN, a/k/a JOI HENRY	§	**Case No. 03-80972 HDH-7**
	§	
Debtor	§	

MATTHEW STEVEN HENRY	§	
	§	
Plaintiff	§	
	§	
v.	§	**Adversary No. 04-3122**
	§	
JOI MARIE SHAHAN	§	
	§	
Defendant	§	

MEMORANDUM OPINION ON MOTIONS TO DEEM ADVERSARY PROCEEDING TIMELY FILED AND TO DISMISS ADVERSARY PROCEEDING

On December 6, 2004, the Court conducted a hearing on the motion of Matthew Steven Henry ("Creditor" or "Plaintiff") to extend deadlines, and on the motion of Joy Marie Shahan ("Debtor" and "Defendant") to dismiss petition as untimely filed. The motions essentially are the same and pose the same question regarding the effectiveness of a debtor rescheduling a Section 341 Meeting and setting new deadlines for discharge and dischargeability complaints without obtaining a court order approving the resetting and the new deadlines.

The facts are not in dispute. Debtor failed to appear at the first meeting of creditors. The Trustee agreed to a reset on the condition that the Debtor notice out the new date for the rescheduled

meeting and agree to an extension of the deadlines for filing complaints regarding discharge and dischargeability. The Creditor attended the new meeting and filed a complaint a few days thereafter, within the new time frames, but outside the periods established in the original notice.

Defendant's counsel sheepishly takes the position that the complaint came too late, as it was outside the original time periods, and that the parties cannot agree to extend the dates without a court order.

After reviewing the matter in some detail, the Court believes that the Plaintiff prevails in the pending motions, for two reasons.

The notice of the rescheduled Section 341 Meeting and new complaint deadlines shall be construed as a motion under Rule 4007(c). The notice has all the elements of a request for relief from this Court, seeking to reschedule the meeting of creditors, as well as to set new discharge/dischargeability deadlines. The notice establishes cause, as required by the rule, and will be granted.

Alternatively, the motions should be granted because the principles of judicial estoppel, as set forth in *In re Superior Crewboats, Inc.*, 374 F.3d 330 (5th Cir. 2004), apply. The elements for judicial estoppel set out by the Fifth Circuit in that case have been met. And, not invoking judicial estoppel for the present facts would allow the Debtor's inconsistent positions to be "used as a means of obtaining unfair advantage in a forum provided for suitors seeking justice." *Id.* at 334-5 (citations omitted).

Therefore, the motions will be granted. Counsel for the Plaintiff shall prepare orders granting the motions as well as an order in the underlying bankruptcy case granting the motion contained in the notice.

The court reserves the right to issue further findings and conclusions, to modify these, and to issue a published opinion.

SIGNED: 12-15-04

Harlin D. Hale
United States Bankruptcy Judge